

THE TOWN OF ERIE  
AND  
THE TOWN OF ERIE URBAN RENEWAL AUTHORITY,  
collectively, Erie

AND

EVERGREEN-287 & ARAPAHOE, L.L.C.,  
the Developer

DISPOSITION AND DEVELOPMENT AGREEMENT

Dated as of March 22<sup>nd</sup>, 2016

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## DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of March 22<sup>nd</sup>, 2016, by and between the TOWN OF ERIE, a Colorado statutory town (the "Town"), Erie of Erie Urban Renewal Authority, a Colorado urban renewal authority ("TOEURA", and together with the Town, "Erie"), and EVERGREEN-287 & ARAPAHOE, L.L.C., an Arizona limited liability company (the "Developer").

### RECITALS

WHEREAS, Erie owns the Property and desires that the Property be developed in order to remediate blight as consistent with and in furtherance of the purposes of the Town and the Urban Renewal Plan;

WHEREAS, Erie desires that the Property be divided and developed in two distinct components of retail and residential (each, a "Component");

WHEREAS, Erie and the Developer agree that Erie shall not have any financial obligations related to the development of the Property; and

WHEREAS, to the extent portions of the Property are owned by TOEURA, such acquisition was made by TOEURA in furtherance of the goals of the Urban Renewal Law, C.R.S. §31-25-101 et seq., and TOEURA has found that disposition of the portion of the Property owned by it as set forth in this Agreement is in furtherance of that certain Highway 287 Urban Renewal Plan adopted by the Town on September 22, 2015, by means of Resolution 15-09, and will remedy and prevent blighted conditions within the Property; and

WHEREAS, Erie and the Developer wish to proceed with the development of the Property in accordance with the aforementioned goals and the terms hereof.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each covenants and agrees with the other as follows:

### SECTION 1. DEFINITIONS AND PURPOSE

#### 1.1 Definitions.

"Abandonment" means, during the Term, no visible signs of construction have occurred on the Property or no building permits have been issued or extended for the Property for a period of one (1) year or longer, subject to delays of Force Majeure, dating from the last documented visible sign of construction or building permit.

"Affiliate" means any person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the Developer. For purposes of this definition, the term "control" means the power to direct or cause the direction of management and policies, through the ownership of voting rights, by contract or otherwise.

“Anchor Tenant” means a retailer in excess of 50,000 square feet in building area.

“Approvals Period” means the approvals period described in Section 4.1.

“Approvals Period Contingencies” means the contingencies described in Section 4.2.

“CDOT” means the Colorado Department of Transportation.

“CDOT Approvals” means the approvals described in Section 5.2(a).

“Certificate of Occupancy” means the certificate issued by the Town, certifying a building’s compliance with applicable laws and indicating condition suitable for occupancy.

“Closing” or “Closings” means a closing or closings described in Section 5.2.

“Commencement of Construction” means the visible commencement by the Developer of actual physical operations on the Property for the erection of the Public Improvements or Private Improvements on the retail Component, including, without limitation, clearing, demolition, grading, obtaining a foundation permit for the Public Improvements or Private Improvements or commencement of excavation of the Property for the retail Component for footings, foundations or caissons.

“Commitment” means the title commitment described in Section 3.2.

“Completion of Construction” means the issuance by Erie of a Certificate of Occupancy for all of the Public Improvements that the Developer is required to construct hereunder.

“Contingencies” means (i) the Approvals Period Contingencies; and (ii) the Inspection Period Contingencies.

“Deed” means the special warranty deed in the form attached as Exhibit C.

“Default” and “Event of Default” mean those events specified in Sections 15.1 and 15.2.

“Developer” means Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company, and its successors and assigns, that conform with the requirements of SECTION 12.

“Developer’s Broker” means David Hicks & Lampert.

“Developer’s Financing” means the financing described in Section 7.1.

“Development Plan” means the Developer’s concept for the development of the Property, which shall be allocated between retail/commercial uses and residential uses.

“Ditch Reconstruction Agreement” means the ditch reconstruction agreement described in Section 3.5(e).

“Effective Date” means the date first set forth in this Agreement.

“Environmental Laws” mean any international, federal, state or local statute, law, regulation, order, consent, decree, judgment, permit, license, code, covenant, deed restriction, common law, treaty, convention, ordinance or other requirement relating to public health, safety or the environment, including, without limitation, those relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, treatment, storage or management of hazardous or solid waste, or Hazardous Substances or crude oil, or any fraction thereof, or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid Hazardous Substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, if any, applicable to the Property, including without limitation the following: the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Act, the Hazardous Substances Transportation Act, the Federal Water Pollution Control Act, the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Rivers and Harbors Appropriation Act, the Endangered Species Act, the National Environmental Policy Act, the Oil Pollution Act, and any state or local law, and any state statute or local ordinance implementing the same, and any further amendments thereto and all rules and regulations promulgated thereunder.

“Force Majeure” delays, as used herein, means delays resulting from causes beyond the reasonable control of a Party, including, without limitation, any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any private party or governmental agency having jurisdiction over any portion of the Property, over the construction of the Improvements or over any uses thereof, or by delays caused by any action, inaction, condition or other decision by any utility company responsible for utilities, or by delays in inspections or in issuing approvals by private parties or permits by governmental agencies, or by fire, flood, inclement weather, strikes, lockouts or other labor or industrial disturbance (whether or not on the part of agents or employees of either party hereto engaged in the construction of the Improvements), civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, act of public enemy, war, riot, sabotage, blockage, embargo, failure or inability to secure materials, earthquake, or other natural disaster, delays caused by any dispute resolution process, or any cause whatsoever beyond the reasonable control (excluding financial inability) of the party whose performance is required, or any of its contractors or other representatives, whether or not similar to any of the causes hereinabove stated.

“Government Approvals” means the government approvals described in Section 4.1.

“Hard Costs” mean costs and expenses actually paid by the Developer for labor, materials and equipment used for site preparation, demolition, excavating, grading, landscaping, constructing, providing tenant finish, reports, testing, inspections or otherwise constructing the Improvements; provided that any costs or expenses contributed, incurred or paid by Erie or included in the computation of Soft Costs shall not be included in Hard Costs.

“Hazardous Substance” means any hazardous or toxic material, substance or waste, pollutant or contaminant which is defined, prohibited, limited or regulated under any statute, law, ordinance, rule or regulation of any local, state, regional or Federal authority having jurisdiction over the Property, or its use, including but not limited to any material, substance or waste that is (a) defined, listed or otherwise classified as a hazardous substance, hazardous material, hazardous waste or other words of similar meaning under any Environmental Laws; (b) petroleum, petroleum hydrocarbons, and all petroleum products; (c) polychlorinated biphenyls; (d) lead; (e) urea formaldehyde; (f) asbestos and asbestos containing materials; (g) flammables and explosives; (h) infectious materials; (i) atmospheric radon at levels over 4 picocuries per cubic liter, (j) radioactive materials; or (k) defined, prohibited, limited or regulated as a hazardous substance or hazardous waste under any rules or regulations promulgated under any Environmental Laws.

“Holder” means the beneficiary under a Mortgage.

“Improvements” mean the Private Improvements or the Public Improvements.

“Inspection Period” means the inspection period described in Section 3.4.

“Inspection Period Contingencies” means the contingencies described in Section 3.5.

“Mortgage” means and includes a deed of trust, leasehold deed of trust or other instrument creating an encumbrance or lien upon the Property or any portion thereof as part of the Developer’s Financing.

“Party” or “Parties” means a party or the parties to this Agreement.

“Permitted Exceptions” mean those exceptions to the title to the Property that are permitted pursuant to Section 5.4.

“Private Improvements” mean those private improvements that are necessary for the issuance of a Certificate of Occupancy for the Anchor Tenant that the Developer is required to construct or arrange for the construction of pursuant to this Agreement.

“Property” means the real property described in Exhibit A and which shall be allocated into the Retail Property and the Residential Property.

“Public Improvement” means the construction of all infrastructure and related extensions and improvements for the Property, including, without limitation, sanitary sewer and water, roads, electric, cable, phone and internet, as required pursuant to the Development Plan, at the Developer’s sole expense and responsibility.

“Residential Property” means that certain portion of the Property allocated for residential use in accordance with Section 3.5.

“Residential Property Purchase Price” means that purchase price described in Section 5.1(b).

“Retail Property” means that certain portion of the Property allocated for retail and commercial use in accordance with Section 3.5.

“Retail Property Purchase Price” means that purchase price described in Section 5.1(a).

“Schedule of Performance” means Exhibit B, the schedule that governs the times for performance by the Parties.

“Soft Costs” mean reasonable fees and expenses of architects, surveyors, engineers, accountants, attorneys, construction managers and other professional consultants; real property taxes and assessments; direct salary and overhead expenses; development fees, reasonable administration and overhead charges that do not exceed what is normally charged for such services in the Denver Metropolitan Area; permit charges; costs of operating the Improvements prior to issuance of a Certificate of Occupancy; marketing costs, commissions (including both those paid to employees and those paid to third parties), allowances to tenants, and other costs of initial project lease-up; all interest, loan fees and other costs of obtaining and maintaining Developer’s Financing; and other commercially recognized costs that are incurred by the Developer in connection with the acquisition, ownership, development, operation and marketing of the Property and the Improvements; provided that any costs or expenses contributed, incurred or paid by Erie or included in the computation of Hard Costs shall not be included in Soft Costs.

“Standstill Agreement” means the Standstill Agreement described in Section 13.1.

“Surface Use Agreement” means the surface use agreement described in Section 3.5(f).

“Survey” means the survey described in Section 3.3.

“Tax Increment Proposal” means the proposal described in Section 5.2(c).

“Title Company” means First American Title Insurance Company unless otherwise agreed in writing by the Parties.

“Title Policy” means the owner’s title policy described in Section 3.2.

“TOEURA” means the Town of Erie Urban Renewal Authority.

“Town” means the Town of Erie, Colorado.

“Town Approvals” means the approvals described in Section 5.2(a).

“Town Board” means the Board of Trustees of the Town of Erie, Colorado.

“Urban Renewal Plan” means the Highway 287 Urban Renewal Plan dated September 10, 2015, adopted by TOEURA.

“Zoning Ordinance” means the Town zoning ordinance described in Section 6.1.

1.2 Purpose. The purpose of this Agreement is to remediate blight as consistent with and in furtherance of the purposes of the Town and the Urban Renewal Plan.

## SECTION 2. DESCRIPTION OF DEVELOPMENT AND IMPROVEMENTS

The Developer agrees to acquire and develop the Property described in Exhibit A in accordance with this Agreement and the Development Plan by constructing the Improvements as described herein. All construction required of the Parties by this Agreement shall be undertaken and completed in accordance with the Schedule of Performance (Exhibit B), the Development Plan and all applicable laws and regulations, including Town codes and ordinances, and shall be performed in accordance with and subject to the terms and conditions of this Agreement.

## SECTION 3. INSPECTION PERIOD

3.1 Due Diligence Materials. Within thirty (30) days after the Effective Date, Erie shall provide to the Developer copies of any plans, specifications, drawings, surveys, reports, appraisals, environmental reports and assessments, including, without limitation, Phase I and Phase II Environmental Site Assessments, Asbestos and Lead Based Paint Surveys, if any, or other information for the Property in Erie's possession ("Property Information").

3.2 Title. After the Effective Date, the Developer shall obtain a title insurance commitment, together with legible copies of all instruments referred to in such commitment as conditions or exceptions (collectively, the "Commitment"), for 2006 ALTA form issued by Title Company for an owner's title insurance policy on the Title Company's standard form (the "Title Policy") for the Property. The costs of the Title Policy shall be determined in accordance with Sections 5.4.

3.3 Survey. Developer, at Developer's expense, shall obtain an ALTA boundary survey prepared by a certified Colorado surveyor showing all Property lines, improvements, if any, encroachments, setback lines, easements, adjoining roadways, proposed roads and/or proposed existing road extensions, and utility installments located therein and all other matters which are revealed by the Commitment (the "Survey").

3.4 Inspection Period. Developer shall have one hundred eighty (180) days from the Effective Date (the "Inspection Period") to conduct due diligence and approve, at Developer's sole and absolute discretion, the Property, the Property Information, the Commitment, the Survey and the environmental condition of the Property. During the Inspection Period, at its expense, the Developer may make any tests, surveys, inspections or obtain any audits, tests or studies of soils and subsurface conditions, including environmental tests on or about the Property to determine its suitability for construction of the Improvements and to determine if Hazardous Substances exist or have been stored on the Property. If this Agreement is terminated pursuant to an express right to terminate hereunder, the Developer shall deliver copies (without representation or warranty of any kind) of all of such non-proprietary audits, tests, studies or reports to Erie. Erie shall permit the Developer and its representatives access to the Property at reasonable times for the purpose of conducting such tests, inspections and surveys. No charge shall be made for the access provided in this Section. A party entering upon the Property pursuant to this section shall reasonably restore the Property to the same condition, with the exception of any monitoring wells constructed during the Inspection Period, prior to any such entry as is commercially reasonable possible, ordinary wear and tear excepted. If the results of any of the matters referred to in this Section appear unsatisfactory to the Developer for any reason, then the Developer, at

Developer's sole and absolute discretion, shall have the right to terminate this Agreement by giving written notice to that effect to Erie on or before the expiration of the Inspection Period.

3.5 Inspection Period Contingencies. In addition to the conditions set forth in Section 3.4, prior to the expiration of the Inspection Period, or earlier if specifically set forth below, each Party, as applicable, shall satisfy the following contingencies (collectively, the "Inspection Period Contingencies"):

(a) Master Plan. The Parties shall agree on a master plan for and the respective sizes and configurations of the Retail Property and the Residential Property (the "Master Plan"). The Parties covenant and agree to use reasonable, good faith efforts to agree upon the Master Plan, the Retail Property and the Residential Property as early as possible during the Inspection Period in order to assist the Developer in the timely satisfaction of the Contingencies, while acknowledging, however, that the responsibility for proposing the desired configuration lies with the Developer, and that Erie cannot approve, deny or comment until such proposal has been delivered to it by Developer.

(b) Anchor Tenant. The Developer shall secure a commitment for an Anchor Tenant for the Retail Property as evidenced by an executed letter of intent with the Anchor Tenant and shall provide such executed letter of intent to the Town Administrator and the Town's outside legal counsel prior to the expiration of the Inspection Period as confidential and proprietary work product under C.R.S § 24-72-201. If the Town Administrator and the Town's outside legal counsel have any objections to the Anchor Tenant, the Town Administrator shall notify the Developer of such objections in writing within thirty (30) days after receipt thereof, and the Parties shall have until the expiration of said thirty (30) days period to resolve such objections. The Parties covenant and agree to use reasonable, good faith efforts to agree upon an Anchor Tenant as early as possible during the Inspection Period in order to assist the Developer in the timely satisfaction of the Contingencies. For the avoidance of doubt, no agreement between the Developer and a proposed Anchor Tenant shall be binding without the written approval of the Town Administrator. Notwithstanding the foregoing, the Town shall not have any approval rights over any non-Anchor Tenants; provided, however, that the Developer shall take into consideration any input from the Town with respect to leasing or sales to any non-Anchor Tenant.

(c) Financing. The Developer shall provide to the Town Administrator and the Town's outside legal counsel evidence of Developer Financing as further set forth in SECTION 7 as confidential and proprietary work product under C.R.S § 24-72-201. If the Town Administrator and the Town's outside legal counsel have any objections to the Developer's Financing, the Town Administrator shall notify the Developer of such objections in writing within thirty (30) days after receipt thereof, and the Parties shall have until expiration of the Inspection Period to resolve such objections. The Parties covenant and agree to use reasonable, good faith efforts to agree upon Developer's Financing as early as possible during the Inspection Period in order to assist the Developer in the timely satisfaction of the Contingencies.

(d) Tree Removal. On or before April 15, 2016, Erie, at its sole cost and expense, shall remove all trees on the Property protected under the Migratory Bird Treaty Act.

(e) Ditch Reconstruction Agreement. Erie, in coordination with the Developer, shall negotiate in good faith and execute a Ditch Reconstruction Agreement with the South Boulder Canyon Ditch Company for the relocation and piping of the ditch facilities within the Property to facilitate the development of the Property. Erie will deliver copies of the Ditch Reconstruction Agreement to the Developer and the Developer, within ten (10) days after receipt of any such Ditch Reconstruction Agreement shall either approve the Ditch Reconstruction Agreement or disapprove the same and advise Erie in writing of the specific changes required by the Developer to the Ditch Reconstruction Agreement (“Disapproval Notice”). If the Developer fails to timely deliver a Disapproval Notice within such ten (10) day period, then the Developer shall be deemed to have approved the Ditch Reconstruction Agreement.

(f) Surface Use Agreement. Erie, at its sole cost and expense, in coordination with the Developer, shall execute a Surface Use Agreement with Kerr-McGee Oil & Gas Onshore LP, to eliminate any surface use of the Property for mineral extraction. Erie will deliver copies of the Surface Use Agreement to the Developer and the Developer, within ten (10) days after receipt of any such Surface Use Agreement shall either approve the Surface Use Agreement or disapprove the same and advise Erie in writing of the specific changes required by the Developer to the Surface Use Agreement. If the Developer fails to timely deliver a Disapproval Notice within such ten (10) day period, then the Developer shall be deemed to have approved the Surface Use Agreement.

(g) Retail Marketing. The Developer, as assisted by Developer’s Broker, covenants and agrees to use good faith efforts to market the Property to attract quality retail and commercial tenants for the Retail Property, which marketing shall include, Developer’s standard marketing efforts and soliciting the Retail Property at the International Council of Shopping Centers’ Rocky Mountain Idea Exchange and RECon conventions.

Prior to expiration of the Inspection Period, the Developer shall deliver written notice to Erie indicating that each of the Inspection Period Contingencies has been waived or satisfied. In the event that the Developer notifies Erie that it is unable to proceed with this transaction due to a valid failure of any of the Inspection Period Contingencies, this Agreement shall terminate, and the Parties hereto shall be relieved of all further obligations and liability hereunder (other than those that are expressly stated to survive the termination of this Agreement). In the event Developer fails to provide a notice as required herein in this Section, Erie shall provide Developer with a written reminder notice and, if Developer fails to provide a notice as required herein within five (5) days, then this Agreement shall terminate, and the Parties hereto shall be relieved of all further obligations and liability hereunder (other than those that are expressly stated to survive the termination of this Agreement).

#### SECTION 4. APPROVALS PERIOD

4.1 Approvals Period. The Developer shall have two hundred seventy (270) days from the expiration of the Inspection Period (the “Approvals Period”) to obtain all necessary approvals from Erie and CDOT, except as specifically set forth in Section 5.2, with conditions reasonably acceptable to the Developer, necessary to permit the use of the Property by Developer’s tenants (“Government Approvals”). In the event that the Government Approvals

have not been obtained during such 270-day period, the Approvals Period shall automatically extend for an additional sixty (60) days.

4.2 Approvals Period Contingencies. In addition to the conditions set forth in Section 4.1, prior to the expiration of the Approvals Period, or sooner if specifically set forth below, each Party, as applicable, shall satisfy the following contingencies (collectively, the "Approval Period Contingencies"):

(a) Anchor Tenant. Subject to the Town's approval of an Anchor Tenant pursuant to Section 3.5(b)), the Developer shall secure a binding commitment with the Anchor Tenant, which such binding commitment shall include a commercially reasonable construction schedule indicating when the Anchor Tenant will open for business, and shall provide reasonable evidence thereof to the Town Administrator and the Town's outside legal counsel as confidential and proprietary work product under C.R.S § 24-72-201.

(b) Entitlements. The Developer shall create and process all site plans, subdivision plats and construction/building permits with the Town; provided, that the Town, without waiving any of its legislative, regulatory and decision-making authority agrees and covenants to reasonably cooperate in good faith with the Developer in such a manner as to not circumvent the terms of this Agreement.

(c) Retail Marketing. The Developer, as assisted by Developer's Broker, covenants and agrees to use good faith efforts to market the Property to attract quality retail and commercial tenants for the Retail Property, which marketing shall include, Developer's standard marketing efforts and soliciting the Retail Property at the International Council of Shopping Centers' Rocky Mountain Idea Exchange and RECon conventions.

Prior to expiration of the Approvals Period, the Developer shall deliver written notice to Erie indicating that each of the Approvals Period Contingencies has been waived or satisfied. In the event that Developer notifies Erie that it is unable to proceed with this transaction due to a valid failure of any of the Approvals Period Contingencies, this Agreement shall terminate, and the Parties hereto shall be relieved of all further obligations and liability hereunder (other than those that are expressly stated to survive the termination of this Agreement). In the event Developer fails to provide a notice as required herein in this Section, Erie shall provide Developer with a written reminder notice and, if Developer fails to provide a notice as required herein within five (5) days, then this Agreement shall terminate, and the Parties hereto shall be relieved of all further obligations and liability hereunder (other than those that are expressly stated to survive the termination of this Agreement).

## SECTION 5. CLOSING

5.1 Purchase Price. Upon completion of the Survey, the purchase price for the Property shall be as follows:

(a) Retail Property Purchase Price. The Retail Property Purchase Price shall be \$3.00 per square foot, net of all public right-of-way dedications and park/open space dedications and buffers, of the Retail Property, as determined by the Parties in accordance with Section 3.5(a) and shown on the Survey.

(b) Residential Property Purchase Price. The Residential Property Purchase Price shall be \$2.00 per square foot, net of all public right-of-way dedications and park/open space dedications and buffers, of the Residential Property, as determined by the Parties in accordance with Section 3.5(a) and shown on the Survey.

The current estimated total purchase price for the Property is approximately \$5,000,000.00; provided however, that the final purchase price will be subject to the adjustments set forth in this Section 5.1.

5.2 Closing Conditions. The Parties' obligation to close under this Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

(a) Town Approvals. Within thirty (30) days of agreeing upon the Master Plan, the Developer shall submit to the Town an application to amend the Town Comprehensive Plan and the zoning for the Property to allow for the development of the Property in accordance with the Development Plan (the "Town Approvals"). The Town, pursuant to its legislative and regulatory authority, and its normal and customary practice and as required by applicable law, covenants to process in good faith and shall approve or deny the proposed amendments prior to Closing. In the event the Town denies or fails to approve the Town Approvals prior to Closing, the Developer may terminate this Agreement in accordance with SECTION 14.

(b) CDOT Approvals. As soon as reasonably practicable after the Effective Date, the Town, in coordination with the Developer, shall submit to CDOT, and diligently pursue thereafter, an application for an Access Control permit, providing either (i) a full turning movement traffic signal, or (ii) a three-quarters access, off State Highway 287 for the benefit of the Property ("CDOT Approvals"). In the event CDOT denies or fails to approve the CDOT Approvals, or if Developer determines in good faith that the Town will be unable to obtain the CDOT Approvals, then at any time prior to Closing, the Developer may terminate this Agreement in accordance with SECTION 14.

(c) TOEURA Approvals. Within one hundred eighty (180) days of the Effective Date, the Developer shall submit to TOEURA a proposal for the reimbursement of actual reimbursable project costs from tax increment financing and from a percent of incremental sales taxes as allowed by TOEURA that are generated by the development of the Property (the "Tax Increment Proposal"). The Tax Increment Proposal shall include any required feasibility studies, forecasts and projections, which shall be provided by and at the sole expense of the Developer and must be acceptable to Erie in its reasonable discretion, and shall specifically include an analysis of the likelihood and timing of any development activity anticipated to support the generation of the tax increment financing. TOEURA shall consider the Tax Increment Proposal, and the Parties shall have until Closing to agree upon, and for the TOEURA Board to approve, an agreement memorializing the terms of the Tax Increment Proposal. If the Parties are unable to agree upon the form and substance of the Tax Increment Proposal on or before Closing, then the Developer may terminate this Agreement in accordance with SECTION 14. The Parties covenant and agree to use reasonable, good faith efforts to agree upon the final form of the Tax Increment Proposal during the Inspection and Approvals Periods.

### 5.3 Conveyance; Closing.

(a) Retail Property. Within thirty (30) days of notice from the Developer or the later of (i) each Party completing all Inspection Period Contingencies and all Approvals Period Contingencies applicable to the Retail Property, and (ii) expiration of the Approvals Period, the Retail Property or portion thereof shall be conveyed to the Developer by the Deed in consideration for the Retail Property Purchase Price, or allocable portion thereof in furtherance of Section 5.3(c) below.

(b) Residential Property. Within thirty (30) days of notice from the Developer or the later of (i) each Party completing all Inspection Period Contingencies and all Approvals Period Contingencies applicable to the Residential Property, and (ii) expiration of the Approvals Period, the Residential Property shall be conveyed to the Developer by the Deed in consideration for the Residential Property Purchase Price.

(c) Separate Closings; Partial Closings. Based upon the timing of the satisfaction of the Contingencies and/or the timing of the Development Plan, the Retail Property, or portions thereof, and the Residential Property may be conveyed to the Developer simultaneously or separately, it being the intent of the Parties, for instance, to allow for the closing of the portion of the Retail Property for the Anchor Tenant separate from outparcels or pads of the Retail Property. At the time of the closing of the conveyance of each of the Retail Property, or portions thereof, and the Residential Property (each, a "Closing" and collectively the "Closings"), and subject to the terms, covenants and conditions of this Agreement, Erie shall convey to the Developer title by a Deed to each of the Retail Property, or portions thereof, and the Residential Property. The Closings shall take place at the office of the Title Company, unless the Parties agree otherwise in writing. If and to the extent Developer desires to phase the Closing of the Retail Property as herein provided, Developer shall provide notice to the Town of the applicable parcel of the Retail Property subject to an applicable Closing. Notwithstanding anything contained in this Agreement to the contrary, in order to accommodate the separate or partial closings as contemplated above and, if and to the extent necessary to satisfy Developer's obligations set forth in Section 9 and/or the construction scheduling necessary for the Anchor Tenant, Erie hereby agrees to grant to Developer reasonable license agreements to enter the Retail Property, or portions thereof, and the Residential Property, for purposes of site work construction and other Improvements. The parties hereby agree to negotiate such license agreements in good faith.

5.4 Condition of Title. Any Title Policy issued by the Title Company insuring title to the Property shall not include the standard preprinted exceptions and Erie agrees to provide the Title Company, at its cost, with all documents requested by Title Company necessary to remove the standard preprinted exceptions; provided, however, Erie shall not be responsible for any additional costs associated with the deletion of such exceptions or an updated survey. For the avoidance of doubt, Erie shall pay the costs of ALTA standard coverage title insurance, and the Developer shall pay the costs of extended coverage and endorsements, if any. Title to the Property shall be free and clear of all liens, defects and encumbrances, except the following Permitted Exceptions: (a) this Agreement, including those terms included in the Deed or any other document of record; (b) those matters, including easements and rights of way that are part of the Development Plan, or are approved, accepted, or waived by the Developer; (c) easements

for utilities that will continue in use under, and do not unreasonably interfere with, the Development Plan; (d) taxes and assessments not yet due and payable; and (e) the Ditch Reconstruction Agreement and the Surface Use Agreement.

5.5 Title Insurance Policies. Promptly after recordation of the Deed(s), and upon satisfaction of each requirement set forth in the Commitment, the Title Company shall issue the Title Policy in accordance with the Commitment described in Section 3.2 and the provisions of Section 5.4. In no event shall Erie be responsible for a failure by the Title Company to issue the Title Policy, unless such failure is the direct result of a failure by Erie to convey title in accordance with the terms hereof and/or satisfy the terms and conditions of this Agreement. The Developer shall be responsible for all costs of the Title Policy, except as provided in Section 5.4 above, and any title insurance commitments, policies or endorsements required by the Developer or its mortgagees.

5.6 Form of Deed; Recording. At the Closings, the conveyance of each of the applicable parcels and the remaining Property will be accomplished by Deed(s). The Deed(s) shall be subject to the Permitted Exceptions described in Section 5.4. Such Deed(s) shall be subject to all the terms, conditions and requirements of this Agreement and title to the Property shall be in the condition required by Section 5.4. After execution of the Deed(s), the Title Company shall promptly record the Deed(s) with the Clerk and Recorder for Boulder County, Colorado. The Developer shall pay all recording costs, including the state documentary fee, if any.

5.7 Closing Extensions. Notwithstanding anything contained herein to the contrary, Developer may, at its option, extend the Closings for the Retail Property, or portions thereof, for two (2) periods of up to one hundred eighty (180) days each; provided, that such extensions are necessary to accommodate the construction schedule of an Anchor Tenant. To elect to exercise an applicable extension, Developer shall deliver written notice to the Town and evidence of such Anchor Tenant's construction schedule no less than thirty (30) days prior to the then-scheduled Closing.

## SECTION 6. PREPARATION OF PROPERTY FOR DEVELOPMENT

6.1 Zoning. The Property is zoned Planned Development and Community Commercial pursuant to Chapter 2 of the Town Unified Development Code (the "Zoning Ordinance") and limited by the use restrictions set forth in Chapter 3 of the Zoning Ordinance. Except as set forth in Section 5.2(a), the Parties covenant that they will not seek any zoning changes that interfere with accomplishment of the Development Plan or otherwise preclude compliance with this Agreement without consent of Erie.

6.2 "As Is" Nature of Transaction. Except as specifically provided herein and in the Deed(s), Erie has not made, does not make and specifically negates and disclaims any representations, warranties, covenants or guarantees of any kind, whether express or implied, (a) concerning or with respect to the presence of Hazardous Substances on the Property or compliance of the Property with any and all applicable Environmental Laws and (b) the value, nature, quality or condition of the water, soil and geology of the Property. The Developer acknowledges and agrees that to the maximum extent permitted by law, except as set forth herein

and/or in the Deed(s), the sale of the Property, as provided for herein, is made on an "As Is" condition and basis. The Developer and anyone claiming by, through or under the Developer hereby fully and irrevocably releases Erie and its successors from any and all claims that it may now have or hereafter acquire against Erie, its commissioners, employees, representatives and agents for any cost, loss, liability, damage, expense, claim, demand, action or cause of action arising from or related to any such defects and conditions, including, without limitation, compliance with Environmental Laws, affecting the Property or any portion thereof, except claims arising out of breaches of the representations and warranties contained herein.

6.3 Access to Property. Prior to issuance of a final Certificate of Occupancy for the Anchor Tenant, the Developer shall permit representatives of Erie access to the Property at reasonable times for the purpose of carrying out or determining compliance with this Agreement or any Town code or ordinance, including, without limitation, inspection of any work being conducted on the Property; provided, that any such inspection will not unreasonably interfere with Developer's construction work or any tenant's use of the Improvements. No compensation shall be payable to the Parties, nor shall any charge be made in any form by any Party for the access provided in this Section. A party, including Erie, entering upon the Property pursuant to this section shall reasonably restore the Property to its condition prior to such entry, and shall indemnify, defend and hold harmless the Developer for any loss or damage or claim for loss or damage (including reasonable legal fees) resulting from any such entrance, tests and surveys.

6.4 Dedications; Developer Not to Construct Over Utility Easements. The Developer shall dedicate, as appropriate, all easements, public streets, alleys and rights of way required by the Development Plan and applicable Town requirements. The Developer shall not construct any building or other permanent structure other than planters, landscaped areas, access drives, surface parking, loading areas and public plazas, on, over (except for roof or canopy overhangs approved by Erie) or within the boundary lines of any easement for public utilities unless such construction is provided for in such easement, is not inconsistent with the purposes of such easement or has been approved by Erie.

## SECTION 7. DEVELOPMENT FINANCING

7.1 Developer's Financing. Prior to expiration of the Inspection Period, the Developer shall submit to Erie evidence reasonably satisfactory to the Town Administrator with the advice and counsel of the Town Attorney and the Town's Director of Finance that the Developer has the ability to obtain necessary Developer's Financing for the Development Plan. Such evidence shall be sufficiently complete to enable Erie to reasonably verify that the Developer has the legal and financial ability to construct, complete and open the Improvements. The Parties covenant and agree to use reasonable, good faith efforts to agree upon the final form of the Tax Increment Proposal during the Inspection and Approvals Periods. The Parties agree that Erie shall, to the extent of its legal ability to do so and in compliance with the Colorado Open Records Act, C.R.S. 24-72-201 et seq. ("CORA"), protect financial or other confidential and proprietary business documents furnished under this Section 7.1. This Section 7.1 shall protect from inspection by, or disclosure or distribution to, any third party. Erie shall send to the Developer a copy of any such request for disclosure of such information within one (1) business day of Erie's receipt.

7.2 Cooperation Regarding Financing. The Parties will cooperate and provide such reasonable assistance and information (including representations from the members and investors of the Developer regarding compliance with the Office of Foreign Assets Control and anti-money laundering laws, regulations and policies) as may be required in connection with the Developer's Financing. Each Party agrees to give favorable consideration to reasonable changes in this Agreement or in related documents that may be requested by prospective lenders, Erie or others providing financial assistance hereunder, provided that the rights of such Party are not adversely affected by such changes.

## SECTION 8. PLAN SUBMITTAL AND REVIEW PROCEDURE

The Developer shall work closely with Town staff to establish and comply with design guidelines that guarantee consistency and thematic elements throughout the Development Plan, and shall obtain all approvals required by the Code to enable construction of the Project. No further approval of the Development Plan by Erie shall be required pursuant to this Agreement, except with respect to any material change in the Development Plan (or any component thereof), and the normal and customary entitlements, site plan approvals and building permits required of any proposed project within Erie. If the Developer desires to make any material change to the Development Plan, the Developer shall submit the proposed change to Erie for its approval, with an explanation of the justification for the proposed change. Erie shall endeavor to provide an approval or rejection of the proposed changes within thirty (30) days of such submittal and approval shall not be unreasonably withheld or delayed. All work with respect to the construction of the Improvements shall conform with the approved Development Plan and all applicable laws, codes and ordinances.

## SECTION 9. DEVELOPER'S CONSTRUCTION OBLIGATIONS

9.1 Developer Obligations. Subject to Force Majeure, in accordance with and subject to this Agreement, the Developer shall commence, diligently pursue and complete the construction of the Improvements within the time periods specified in the Schedule of Performance. The Developer shall, at its sole cost and expense, obtain all necessary entitlements and approvals, including, without limitation, zoning, subdivision, site plan, building permits and utility, to construct, complete and open the Improvements. The covenants regarding such construction and completion shall run with the land until Completion of Construction and are binding for the benefit of Erie and enforceable by Erie against the Developer and its successors and assigns. Erie and the Developer acknowledge and agree that a summary of all fees and assessments assessed, imposed and/or collected by the Town concerning the development of the Retail Property that are in effect as of the Effective Date, including, without limitation, fees for taps and permits, impact fees and other development fees, is attached hereto as Exhibit E ("Controlled Fee Schedule"). Notwithstanding anything contained in this Agreement to the contrary, with respect to the Retail Property, Developer shall not be obligated for any fees other than as set forth on the Controlled Fee Schedule and/or any increases in any such fees beyond that enumerated on the Controlled Fee Schedule.

(a) Pre-Construction. Subject to Force Majeure, in accordance with the Schedule of Performance, the Developer shall complete all steps necessary to undertake Commencement of Construction and Completion of Construction, including, without limitation,

planning, design and engineering for the Property and the Improvements. The Developer shall cooperate with Town staff to establish and comply with design guidelines that guarantee consistency and thematic elements throughout the Development Plan, and the Developer shall not have the right to materially alter the Development Plan without the consent of Erie, which may be withheld in its reasonable discretion.

(b) Retail Property. Subject to Force Majeure, in accordance with the Schedule of Performance, the Developer shall perform, or cause to be performed, Commencement of Construction and Completion of Construction of the Improvements required for the Retail Property.

(c) Residential Property. Subject to Force Majeure, in accordance with the Schedule of Performance, the Developer shall perform, or cause to be performed, Commencement of Construction and Completion of Construction of the Improvements required for the Residential Property.

9.2 Progress Reports. Until Completion of Construction, the Developer shall make quarterly reports in such commercially reasonable detail as may reasonably be requested by Erie, as to actual progress of the Developer with respect to the Commencement of Construction, the progress of construction and the Completion of Construction for the Property.

## SECTION 10. SAFETY; INDEMNIFICATION; INSURANCE

10.1 Protection of Persons and Property. At all times while this Agreement is in effect, the Developer shall take reasonable precautions to prevent damage, injury or loss (to persons and property as a direct result of Developer's design, inspection and construction activities on the Property). The Developer shall comply with all applicable safety laws, regulations and building codes, and shall post appropriate signs and other warnings notifying employees and members of the public of all construction hazards. The Developer shall promptly remedy physical damage to the Property caused in whole or in part by the Developer, its contractors and subcontractors or anyone employed directly or indirectly by any of them, except for damage or loss attributable to acts or omissions of Erie or their contractors or subcontractors or anyone directly or indirectly employed by Erie or their contractors or subcontractors.

10.2 Indemnification; Insurance. Except for pre-existing conditions and/or the mere discovery of exiting conditions, the Developer shall defend, indemnify, and hold Erie, its commissioners, officers and employees, harmless from, all claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any of the Developer's design, inspection and construction activities under this Agreement, whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement, except for damage or loss attributable to acts or omissions of Erie or its contractors or subcontractors or anyone directly or indirectly employed by Erie or its contractors or subcontractors. At all times while the Developer is engaged in preliminary work on the Property or adjacent streets and during the period from the Commencement of Construction until Completion of Construction,

the Developer shall carry and, upon request, will provide Erie with valid certificates of insurance as follows:

(a) Builder's risk insurance (with a deductible reasonably acceptable to Erie) in an amount equal to 100% of the replacement cost of the Improvements at the date of Completion of Construction;

(b) comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance), automobile and umbrella liability insurance with a combined single limit for both bodily injury and property damage reasonably acceptable to Erie, but in no event in excess of \$2,000,000.00;

(c) worker's compensation insurance, with statutory coverage, including the amount of deductible permitted by applicable law.

The policies of insurance required under subparagraphs a through c above shall be reasonably satisfactory to Erie, placed with financially sound and reputable insurers, require the insurer to endeavor to give at least thirty (30) days advance written notice to Erie in the event of cancellation or change in coverage and shall name Erie as an additional insured.

In the event any portion of the Property is developed by any party other than the Developer (in each case, the "Replacement Developer"), the Developer shall remain liable for the obligations of this Section 10.2; provided, however, that the Developer may be released from the obligations of this Section 10.2, if the Replacement Developer carries, and provides to Erie valid certificates of insurance for, all insurance policies as required by this Section 10.2 and executes a substitute indemnification agreement, subject to Erie's reasonable approval.

### 10.3 Repair or Reconstruction. [Intentionally Deleted].

## SECTION 11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties by the Town. The Town represents and warrants as follows:

(a) The Town is a statutory town duly organized and existing under applicable law and has the right, power, legal capacity and the authority to enter into this Agreement and has authorized the execution, delivery and performance of this Agreement by proper action of its Board of Trustees.

(b) The Town knows of no litigation or threatened litigation, proceeding or investigation contesting the powers of Erie or its officials with respect to the Property, this Agreement or the Improvements that has not been disclosed to the Developer.

(c) The filing or service of any such suit affecting the Property prior to the delivery of a Certificate of Occupancy shall be disclosed immediately to the Developer by the Town. To the fullest extent of the law, the Town shall indemnify, defend and hold the Developer and its officers, partners, directors, shareholders, managers, members and successors and assigns

harmless from and against all claims, appeals and/or lawsuits challenging and/or concerning the validity and enforcement of this Agreement and/or the Tax Increment Proposal. In addition, the Town covenants and agrees, at its sole cost and expense, to defend the validity and enforcement of this Agreement and/or the Tax Increment Proposal. Without limiting the generality of the foregoing, the Developer shall be responsible for its own costs and expenses, including, without limitation, Developer's attorneys' fees, in the event the Developer elects to engage its own legal representation with respect to any claims, appeals and/or lawsuits challenging and/or concerning the validity and enforcement of this Agreement and/or the Tax Increment Proposal.

(d) To the best of the Town's actual knowledge, the Town knows of no leases, options, rights of first refusal or other encumbrances affecting title to or use of the Property except as set forth in the Commitment.

(e) To the best of the Town's actual knowledge, the Town knows of no Hazardous Substances, including underground storage tanks, which have been released or discharged on the Property or adjacent property that caused contamination of the soil and/or ground water on or under the Property that has not been disclosed to Developer.

11.2 Representations and Warranties by TOEURA. TOEURA represents and warrants as follows:

(a) TOEURA is an urban renewal authority, a body corporate and politic duly organized and existing under applicable law and has the right, power, legal capacity and the authority to enter into this Agreement and has authorized the execution, delivery and performance of this Agreement by proper action of its Board of Trustees.

(b) TOEURA knows of no litigation or threatened litigation, proceeding or investigation contesting the powers of TOEURA or its officials with respect to the Property, this Agreement or the Improvements that has not been disclosed to the Developer.

(c) The filing or service of any such suit affecting the Property prior to the delivery of a Certificate of Occupancy shall be disclosed immediately to the Developer by TOEURA. To the fullest extent of the law, TOEURA shall indemnify, defend and hold the Developer and its officers, partners, directors, shareholders, managers, members and successors and assigns harmless from and against all claims, appeals and/or lawsuits challenging and/or concerning the validity and enforcement of this Agreement and/or the Tax Increment Proposal. In addition, TOEURA covenants and agrees, at its sole cost and expense, to defend the validity and enforcement of this Agreement and/or the Tax Increment Proposal. Without limiting the generality of the foregoing, the Developer shall be responsible for its own costs and expenses, including, without limitation, Developer's attorneys' fees, in the event the Developer elects to engage its own legal representation with respect to any claims, appeals and/or lawsuits challenging and/or concerning the validity and enforcement of this Agreement and/or the Tax Increment Proposal.

(d) To the best of TOEURA's actual knowledge, TOEURA knows of no leases, options, rights of first refusal or other encumbrances affecting title to or use of the Property except as set forth in the Commitment.

(e) To the best of TOEURA's actual knowledge, TOEURA knows of no Hazardous Substances, including underground storage tanks, which have been released or discharged on the Property or adjacent property that caused contamination of the soil and/or ground water on or under the Property that has not been disclosed to Developer.

11.3 Representations and Warranties by the Developer. The Developer represents and warrants as follows:

(a) The Developer is a limited liability company duly organized, validly existing and is in good standing under the laws of the State of California. The Developer has the right, power, legal capacity and authority and has duly authorized the execution, delivery and performance of this Agreement by proper action of its board.

(b) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) violate any law, rule, order or regulation applicable to the Developer or to the Developer's governing documents; (ii) result in the breach or default under any agreement or other instrument to which the Developer is a party or by which it may be bound or affected; or (iii) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of the Developer.

(c) To Developer's actual knowledge, the Developer knows of no action, suit, proceeding or investigation that is threatened or pending against the Developer or its principals that has not been disclosed to Erie that materially impairs the ability of the Developer to perform its obligations under this Agreement. The filing or service of any such suit affecting the Property prior to the delivery of a Certificate of Occupancy shall be disclosed immediately to Erie by the Developer.

(d) Subject to obtaining the Developer's Financing, the Developer has the necessary financial and legal ability to construct the Improvements, perform its obligations under this Agreement and the other agreements incidental to such performance as contemplated by this Agreement.

## SECTION 12. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

12.1 Prohibition Against Assignment of Agreement. The Developer agrees that it shall not make, create, or suffer to be made or created, any total or partial sale or transfer in any form of this Agreement or any part thereof or any interest therein, or any agreement to do the same, without the prior written approval of Erie. However, the following types of conveyances do not require Erie's consent:

(a) a Mortgage, collateral assignment or other encumbrance of the Developer's rights under this Agreement, including, without limitation, its right to receive any payment or reimbursement, to any Holder or other party that provides acquisition, construction, working capital, tenant improvement or other financing to the Developer in connection with the development of the Property; provided, that the Developer provide Erie with written notice of the name and address of such Holder or other party;

- (b) the leasing or rental to tenants or sale of portions of the Retail Property to retail users or the Anchor Tenant;
- (c) sales of portions of Residential Property to builders and/or residential developers;
- (d) the establishment of easements to effectuate the Development Plan;
- (e) the creation of an association and/or other covenants, conditions and restrictions and recordation of documents in furtherance thereof;
- (f) assignment of its rights to an Affiliate or an entity established by Developer for the closing, construction or financing of the Improvements; or
- (g) agreements to sell, lease or transfer all or part of the Property or the Private Improvements (except for leasing or rental or rental to tenants of the Private Improvements) after completion of the Improvements.

12.2 Information as to Interest Holders. Exhibit D contains information regarding the Developer, its members and the Developer's consultants and advisors. During the period between execution of this Agreement and the issuance of a final Certificate of Occupancy for construction of all of the Improvements, the Developer will promptly notify Erie of any material changes in the ownership of interests, legal or beneficial, in the Developer or of any material change in the direct or indirect control of such interests and in all changes and additions to Exhibit D, which changes shall be subject to Erie's prior written approval, to the extent required pursuant to Section 12.1 hereof.

### SECTION 13. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

13.1 Limitation Upon Encumbrance of Property. Prior to Closing, the Developer shall not mortgage or encumber any part of the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to any part of the Property, except for (a) a Mortgage limited to the Developer's interest in this Agreement and obtained as part of Developer's Financing to the extent necessary for development and construction of the Property (including Hard Costs and Soft Costs), in which event the Holder of the Mortgage shall have entered into a standstill or intercreditor agreement with Erie (a "Standstill Agreement") which Borrower agrees will permit each of Erie and the Holder to send any notices of Developer's default to each other or (b) those encumbrances permitted in Section 12.1 above. Additionally, prior to issuance of a Certificate of Occupancy for the Anchor Tenant, the Developer shall, upon its knowledge thereof, promptly notify Erie of any encumbrance or lien that has been created on or attached to the Property (or any part thereof) or the Improvements (or any part thereof), whether by voluntary act of the Developer or otherwise. Erie agrees that, to the extent it legally may do so, and in compliance with CORA, it shall keep such information confidential and shall protect the same from disclosure. The Developer shall defend, indemnify, and hold Erie, its commissioners, officers and employees, harmless from, all mechanic's liens or lis pendens actions, which may be caused by any of the Developer's design, inspection and construction activities under this Agreement and whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the

Developer, or the Developer shall carry and shall provide Erie with valid certificates of insurance for mechanic's liens.

13.2 Holder Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, prior to Completion of Construction, the Holder of any Mortgage authorized by this Agreement shall not be obligated to construct or complete the Improvements (or any part thereof) or to guarantee such construction or completion; provided, that nothing in this Agreement shall be construed to authorize any such Holder to devote the Improvements to any other use or to construct any improvements thereon other than the Improvements.

13.3 Copy of Notice of Default to Mortgagee. Erie shall deliver a copy of any notice or demand to the Developer with respect to any claimed Default by the Developer. Provided that the Holder has provided a notice address to Erie, Erie shall simultaneously forward a copy of each notice or demand sent to the Developer to the Holder at the such address.

13.4 Holder's Option to Cure Defaults. Prior to Completion of Construction, after any Default by the Developer, the Holder shall have the right to cure or remedy such Default and to add the cost thereof to the debt and lien of its Mortgage.

#### SECTION 14. CONTINGENCIES; TERMINATION

14.1 Termination by Developer. The Developer shall have the right to terminate this Agreement if:

- (a) prior to the expiration of the Inspection Period, either Party, after good faith efforts, fails to satisfy its Inspection Period Contingencies; or
- (b) prior to the expiration of the Approvals Period, either Party, after good faith efforts, fails to satisfy its Approvals Period Contingencies; or
- (c) unless waived by the Developer, the failure of any of the closing conditions set forth in Section 5.2 or elsewhere in this Agreement; or
- (d) the Developer reasonably and in good faith determines, based upon the results of soils or environmental tests and within the time periods set forth in the Schedule of Performance, that the soils or environmental conditions or utilities are not satisfactory to carry out development of the Property or construction of the Improvements; or
- (e) unless waived by the Developer, title to the Property does not conform with the requirements of Section 5.4 at the time specified in the Schedule of Performance.

14.2 Termination by Erie. Erie shall have the right to terminate this Agreement if:

- (a) prior to the expiration of the Inspection Period, the Developer, after good faith efforts, fails to satisfy its Inspection Period Contingencies; or
- (b) prior to the expiration of the Approvals Period, the Developer, after good faith efforts, fails to satisfy its Approvals Period Contingencies.

14.3 Action to Terminate. Termination must be upon the dates specified in this Agreement, inclusive of the Schedule of Performance, and must be accomplished by written notification to the other Party. Except as otherwise provided in this Agreement, failure to terminate this Agreement for any failure identified in this SECTION 14 constitutes a waiver of the right to terminate this Agreement for that particular failure only and shall not constitute a waiver of the right to terminate this Agreement for any other failure under such sections. No action to terminate shall occur until the notice and Grace Period provisions set forth in Section 15.3 have been fulfilled.

14.4 Effect of Termination. If this Agreement is terminated pursuant to this SECTION 14, each Party shall pay its own costs and expenses related to this Agreement. In addition, the Parties agree to execute a mutual release, lease termination(s), quit claim deed and other instruments reasonably required to effectuate and give notice of such termination.

## SECTION 15. DEFAULT; REMEDIES

15.1 Default by Developer. Default by Developer under this Agreement shall mean one or more of the following events:

- (a) The Developer, in violation of this Agreement, assigns or attempts to assign this Agreement, the Improvements or any part of its interest in Property, or any rights in the same, except as allowed in Section 12.1; or
- (b) the Developer fails to commence, diligently pursue and complete the Contingencies as required by this Agreement and this Agreement has not been terminated under the provisions of SECTION 14; or
- (c) prior to issuance of a Certificate of Occupancy for the Anchor Tenant, the Developer suffers or permits any lien, uncured default or encumbrance on the Property or the Improvements in violation of this Agreement, but a lien shall not constitute a Default if Developer deposits in escrow with Erie or the Title Company sufficient funds or undertakes other measures reasonably satisfactory to Erie to discharge the lien, which may include bonding over in accordance with Colorado statutes;
- (d) the Developer fails to observe or perform any other covenant or obligation required of it under this Agreement or to make good faith efforts to obtain Developer's Financing or any representation or warranty made by the Developer under this Agreement is materially false when made;
- (e) a Holder exercises any remedy provided by loan documents, law or equity that creates a materially adverse effect on the Property or the Improvements, but such default by the Developer shall not defeat the rights of any Holder hereunder; or
- (f) prior to issuance of a Certificate of Occupancy for the Anchor Tenant, the Developer fails to perform its obligations to a Holder resulting in an uncured event of default under a Mortgage.

If any of the foregoing Defaults is not cured within the time provided in Section 15.3, then Erie may exercise any remedy available under Sections 15.4, 15.5 and 15.6.

15.2 Default by Erie. Default by Erie under this Agreement shall mean one or more of the following events:

(a) failure of Erie to comply with the provisions of SECTION 13 relating to the rights of the Holder of a Mortgage under the circumstances set forth therein; or

(b) Erie fails to observe or perform any other covenant or obligation required of it under this Agreement or any representation or warranty made by Erie under this Agreement is materially false when made.

If any of the foregoing defaults is not cured within the time provided in Section 15.3, then the Developer may exercise any remedy available under Section 15.4 and 15.6.

15.3 Grace Periods. Upon a Default by either Party, such Party shall, upon written notice from the other, proceed immediately to cure or remedy such Default. Any Default shall be cured within thirty (30) days after receipt of such notice, or such cure shall be commenced and diligently pursued to completion within a reasonable time, but in any event no longer than ninety (90) days, if curing cannot be reasonably accomplished within thirty (30) days and the Party has commenced curing within such thirty (30) day period and diligently pursues such cure to completion.

15.4 Remedies on Default. Whenever any Default occurs and is not cured under Section 15.3 of this Agreement, the non-defaulting Party may take any one or more of the following actions:

(a) Suspend performance under this Agreement until it receives assurances from the defaulting Party, deemed adequate by the non-defaulting Party, that the defaulting Party will cure its Default and continue its performance under this Agreement within a reasonable time; or

(b) subject to the rights of a Holder, cancel and rescind this Agreement; or

(c) take whatever legal or administrative action or institute such proceedings as may be necessary or desirable in its opinion to enforce observance or performance of this Agreement, including, without limitation, specific performance or to seek any other right or remedy at law or in equity, including damages.

15.5 Other Rights and Remedies. Erie and the Developer shall have the right to institute such actions or proceedings as either may deem desirable for effectuating the purposes of this SECTION 15. If a Party must commence legal action to enforce its rights and remedies under this Agreement, the prevailing Party shall be entitled to receive, in addition to any other relief, its costs and expenses, including reasonable attorneys' fees, of such action or enforcement.

15.6 Delays; Waivers. Any delay by either Party in pursuing any right or remedy under this Agreement shall not operate as a waiver of such right or remedy in any way; nor shall any

waiver made by such Party be considered or treated as a waiver of any right or remedy with respect to any other Default by the other Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of the right or remedy by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

15.7 Enforced Delay in Performance for Causes Beyond Control of Party. Anything in this Agreement to the contrary notwithstanding, neither Party shall be considered in Default in the event of enforced delay in the performance of obligations under this Agreement due to Force Majeure, discovery of Hazardous Substances on the Property, acts of the other Party, acts of third parties (including the effect of any petitions for initiative or referendum), the effect of any condition precedent to any obligation of either Party over which such Party has no control, the effect of litigation, acts of courts, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming such delay, shall be extended for the period of the enforced delay.

15.8 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any such remedy shall not preclude the exercise by it, at the same or different times, of any other remedy for any other Default by any other Party.

## SECTION 16. MISCELLANEOUS

16.1 Conflicts of Interest. None of the following shall have any personal interest, direct or indirect, in this Agreement: a member of Erie Council; an employee of Erie who exercises responsibility concerning the Development Plan; or an individual or firm retained by Erie who has performed consulting services in connection with the Development Plan. None of the above persons or entities shall participate in any decision relating to this Agreement that effects his or her personal interests or the interests of any entity in which he or she is directly or indirectly interested.

16.2 Antidiscrimination. The Developer, for itself and its successors and assigns, agrees that in the construction of and in the use and occupancy of the Property and the Improvements, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, disability, marital status, ancestry or national origin.

16.3 No Merger. None of the provisions of this Agreement shall be merged by reason of the Deed transferring title to the Property from Erie to the Developer, and such Deed shall not be deemed to affect or impair the provisions of this Agreement.

16.4 Title of Sections. Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

16.5 No Third-Party Beneficiaries. Except for specific rights in favor of Mortgagees or Affiliates, no third-party beneficiary rights are created in favor of any person not a party to this Agreement.

16.6 Venue and Applicable Law. Any action arising out of this Agreement shall be brought in the Boulder County District Court and the laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement.

16.7 Nonliability of Town Officials, Agents and Employees. No council member, board member, commissioner, official, employee, consultant, attorney or agent of Erie shall be personally liable to the Developer under this Agreement or in the event of any Default by Erie or for any amount that may become due to the Developer.

16.8 Erie Not a Partner; Developer Not Erie's Agent. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, Erie shall not be deemed or constituted a partner or joint venture of the Developer. The Developer shall not be the agent of Erie and Erie shall not be responsible for any debt or liability of the Developer or any operator or manager of the Improvements.

16.9 Integrated Contract. This Agreement is an integrated contract and invalidation of any of its provisions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect unless the Parties otherwise agree in writing to an amendment.

16.10 Counterparts. The Agreement is executed in counterparts, each of which shall constitute one and the same instrument.

16.11 Notices. A notice, demand or other communication under this Agreement by any Party to the other shall be in writing and sufficiently given if delivered in person or if it is delivered by overnight courier service with guaranteed next-day delivery or by certified mail, return receipt requested, postage prepaid or by electronic mail, return receipt requested, and

(a) in the case of the Developer, is addressed to or delivered to the Developer as follows:

Evergreen Devco, Inc.  
Attention: Tyler Carlson  
1873 South Bellaire Street, Suite 1106  
Denver, Colorado 80222  
Email: tcarlson@evgre.com

with a copy to:

Evergreen Devco, Inc.  
Attention: Russell Perkins  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Email: rperkins@evgre.com

and

Lathrop & Gage, LLP  
Attention: Brian P. Jumps  
950 Seventeenth Street, Suite 2400  
Denver, Colorado 80202  
Email: [bjumps@lathropgage.com](mailto:bjumps@lathropgage.com)

(b) in the case of Erie, is addressed to or delivered to Erie as follows:

Town of Erie  
Attention: A.J. Krieger, Town Administrator  
645 Holbrook Street  
P.O. Box 750  
Erie, Colorado 80516  
Email: [townadministrator@erieco.gov](mailto:townadministrator@erieco.gov)

with a copy to:

Town of Erie  
Attention: Mark Shapiro, Town Attorney  
645 Holbrook Street  
P.O. Box 750  
Erie, Colorado 80516  
Email: [mark@mshapirolaw.com](mailto:mark@mshapirolaw.com)

and

Brownstein Hyatt Farber Schreck LLP  
Attention:Carolynne White  
410 17th Street, Suite 2200  
Denver, Colorado 80202  
Email: [cwhite@bhfs.com](mailto:cwhite@bhfs.com)

or at such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other as provided in this section.

16.12 Good Faith of Parties. In performance of this Agreement or in considering any requested extension of time or in the giving of any approval, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously or unreasonably withhold, delay or condition any approval required by this Agreement.

16.13 Exhibits Merged. All Exhibits annexed to this Agreement shall be deemed to be expressly integrated herein.

16.14 Days. If the day for any performance or event provided for herein is a Saturday, Sunday or other day on which either national banks or the office of the Clerk and Recorder of Boulder County, Colorado, is not open for the regular transaction of business, such day therefor shall be extended until the next day on which said banks or said office are open for the transaction of business.

16.15 Further Assurances. Each Party agrees to execute such documents and take such action as shall be reasonably requested by the other Party to confirm, clarify or effectuate the provisions of this Agreement. The Parties agree to cooperate with each other during the term of this Agreement by granting to each other such reciprocal easements, cross easements and rights of way for pedestrian and vehicular ingress and egress, walkways, parking and such other matters as may be reasonably required for the proper development and use of the Property in accordance with this Agreement. Prior to the Commencement of Construction, the Parties will use their reasonable best efforts to agree upon and place of record with the Clerk and Recorder of Boulder County, Colorado, a memorandum of this Agreement or other mutually acceptable form of the covenants contained in this Agreement; provided, however, notwithstanding the foregoing, if the Parties fail to agree on the form and contents of such memorandum or covenants, Erie, in its sole discretion, may elect to record this entire Agreement, including any amendments.

16.16 Certifications. Each Party agrees to execute such documents as the other Party may reasonably request to verify or confirm the status of this Agreement and of the performance of the obligations hereunder and such other matters as the requesting Party may reasonably request.

16.17 Amendments. This Agreement shall not be amended except by written instrument signed and delivered by the Parties.

16.18 Representations and Warranties. No representations or warranties whatever are made by any Party except as specifically set forth in this Agreement.

16.19 Minor Changes. This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The Town Administrator is authorized to make, and may have made, minor changes in this Agreement and the attached Exhibits as they have considered necessary, provided however that such changes have been previously approved in writing by Developer. So long as such changes were consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, the execution of this Agreement shall constitute conclusive evidence of the approval of such changes by the respective Parties.

16.20 Due Diligence Materials. Upon any termination of this Agreement, Developer shall promptly provide Erie (without representation or warranty of any kind) with copies of all non-proprietary, non-confidential due diligence materials produced in connection with the Property.

*[Signature page follows.]*

IN WITNESS WHEREOF, Erie and the Developer have caused this Agreement to be duly executed as of the Effective Date.

**DEVELOPER:**

EVERGREEN-287 & ARAPAHOE, L.L.C.,  
an Arizona limited liability company

By: EVERGREEN DEVELOPMENT  
COMPANY-2016, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: EVERGREEN DEVCO, INC., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: ~~Vice President~~  
Principal

**ERIE:**

TOWN OF ERIE,  
a Colorado municipal home rule corporation

By:   
Name: Tina Harris  
Title: Mayor



TOWN OF ERIE URBAN RENEWAL AUTHORITY,  
a Colorado urban renewal authority

By:   
Name: Tina Harris  
Title: Chair



**EXHIBIT A**  
**Legal Description of Property**

[to be inserted]

**EXHIBIT B**  
**Schedule of Performance**

<u>Event</u>	<u>Date</u>
<b><u>General Provisions</u></b>	
A1. Effective Date of this Agreement.	_____, 2016
A2. Erie delivers the Property Information to the Developer.	30 days after the Effective Date
A3. Developer completes review of due diligence.	Expiration of the Inspection Period
A4. Developer completes all Governmental Approvals.	Expiration of the Approvals Period
<b><u>Development Plan and Financing</u></b>	
1-1. Developer commences planning, design and engineering for the Property.	Effective Date
1-2. Developer submits evidence of Developer's Financing to Erie.	Expiration of the Inspection Period
1-3. Date for approval or disapproval of Developer's Financing by Erie.	30 days after Item 1-2
<b><u>Property Development</u></b>	
2-1. Commencement of Construction of Improvements by the Developer.	TBD
2-2. Completion of Construction by Developer of Improvements.	TBD

## **EXHIBIT C**

### **Special Warranty Deed**

THE [TOWN OF ERIE/TOWN OF ERIE URBAN RENEWAL AUTHORITY] (“Grantor”), a Colorado [statutory town/urban renewal authority], whose address is 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516, for the consideration of the sum of One Dollar (\$1.00) in hand paid, hereby sells and conveys to EVERGREEN DEVCO, INC., a California corporation (“Grantee”), whose legal address is 12460 1<sup>st</sup> Street, Eastlake, Colorado 80614, the following real property in the County of Boulder, State of Colorado, to wit:

**See Exhibit A**

with all of its appurtenances, and warrants the title against all persons claiming under it, subject to the following permitted exceptions:

**See Exhibit B**

Signed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_

**GRANTOR:**

[TOWN OF ERIE/TOWN OF ERIE URBAN  
RENEWAL AUTHORITY]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

STATE OF COLORADO    )  
                                          ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_,  
by \_\_\_\_\_, as \_\_\_\_\_, of the [Town of Erie/Town of Erie  
Urban Renewal Authority], a Colorado [statutory town/urban renewal authority].

My commission expires:

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

**Exhibit A to Special Warranty Deed  
Legal Description of Property**

[to be inserted]

**Exhibit B to Special Warranty Deed  
Permitted Exceptions**

[to be inserted]

**EXHIBIT D**  
**Developer's Information Statement**

1. Name, address, telephone and facsimile number of Developer:

c/o Evergreen Devco, Inc.  
Attention: Tyler Carlson  
1873 South Bellaire Street, Suite 1106  
Denver, Colorado 80222  
Telephone: 303-757-0462  
Facsimile: 602-567-7147  
Email: tcarlson@evgre.com

2. Federal Identification Number of Developer: \_\_\_\_\_ **[TO BE INSERTED]**

3. Name, address, title and telephone number of corporate officers of Developer and their percentage of ownership interest in Developer:

c/o Evergreen Devco, Inc.  
Attention: Bruce Pomeroy  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Telephone: 602-808-8600  
Facsimile: 602-808-9100  
Email: bpomeroy@evgre.com

c/o Evergreen Devco, Inc.  
Attention: Andrew Skipper  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Telephone: 602-808-8600  
Facsimile: 602-808-9100  
Email: askipper@evgre.com

c/o Evergreen Devco, Inc.  
Attention: Laura Ortiz  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Telephone: 602-808-8600  
Facsimile: 602-808-9100  
Email: lortiz@evgre.com

4. Date of Organization of Developer: \_\_\_\_\_ **[TO BE INSERTED]**

5. Name, address and telephone number of principal members of Developer's team of consultants and advisors:

Attorney:

Lathrop & Gage, LLP  
950 Seventeenth Street, Suite 2400  
Denver, Colorado 80202  
Attention: Brian P. Jumps  
Telephone: 720-931-3132  
Facsimile: 720-931-3201  
E-Mail: [bjumps@lathropgage.com](mailto:bjumps@lathropgage.com)

Architectural/Engineering:

Galloway & Company, Inc.  
Attention: Carl T. Schmidlein  
5300 DTC Parkway, Suite 100  
Greenwood Village, CO 80111  
Telephone: 303-770-8884  
Facsimile: 303-770-3636  
Email: [carlschmidlein@gallowayus.com](mailto:carlschmidlein@gallowayus.com)

Project Manager:

Evergreen Devco, Inc.  
Attention: Russell Perkins  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Telephone: 602-567-7129  
Facsimile: 602-567-7143  
Email: [rperkins@evgre.com](mailto:rperkins@evgre.com)

Acquisition Manager:

Evergreen Devco, Inc.  
Attention: Tyler Carlson  
1873 South Bellaire Street, Suite 1106  
Denver, Colorado 80222  
Telephone: 303-757-0462  
Facsimile: 602-567-7147  
Email: [tcarlson@evgre.com](mailto:tcarlson@evgre.com)

**EXHIBIT E**

**Controlled Fee Schedule**

[to be inserted]